

IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. DA 10-0205

MICHELLE KULSTAD,

Plaintiff and Appellee,

v.

BARBARA L. MANIACI,

Defendant and Appellant.

On Appeal from the Montana Fourth Judicial District Court
Cause No. DR-07-34
Honorable Edward P. McLean

APPELLANT'S REPLY BRIEF

APPEARANCES:

APPELLANT:

Linda Osorio St. Peter, Esq.
ST. PETER LAW OFFICES, P.C.
2620 Radio Way
P.O. Box 17255
Missoula, MT 59808
(406) 728-8282

Austin R. Nimocks, Esq.*
ALLIANCE DEFENSE FUND
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020

*Admitted *pro hac vice*

APPELLEE:

Michael G. Alterowitz, Esq.
ALTEROWITZ LAW OFFICES, P.C.
327 West Pine Street
Missoula, MT 59802
(406) 542-9904

Susan G. Ridgeway, Esq.
210 E. Pine Street, Suite 200
P.O. Box 8242
Missoula, MT 59807-8242
(406) 541-8882

Elizabeth L. Griffing, Esq.
ACLU OF MONTANA FOUNDATION
P.O. Box 9138
Missoula, MT 59807
(406) 830-3009

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES	1
ARGUMENT	2
CONCLUSION	19
CERTIFICATE OF COMPLIANCE	20
CERTIFICATE OF SERVICE	20
APPENDIX	21

TABLE OF AUTHORITIES

<u>State Cases:</u>	<u>Page</u>
<i>Bryan v. Yellowstone County Elem. Sch. Dist. No. 2</i> , 312 Mont. 257, 60 P.3d 381 (2002)	2
<i>Centech Corp. v. Sprow</i> , 2005 MT 467 (2005)	12
<i>Centech Corp. v. Sprow</i> , 2006 MT 27, 331 Mont. 98, 128 P.3d 1036 (2006)	12
<i>Dew v. Dower</i> , 258 Mont. 114, 852 P.2d 549 (1993)	2
<i>Dowell v. Mont. Dep't of Pub. HHS</i> , 2006 MT 55	3
<i>Frasceli, Inc. v. Department of Revenue Liquor Div.</i> , 235 Mont. 152, 766 P.2d 850 (1988)	12
<i>In re Best</i> , 2010 MT 59	11, 12
<i>In re J.N.</i> , 1999 MT 64, 293 Mont. 524, 977 P.2d 317	9
<i>In re Marriage of Guffin</i> , 2009 MT 169, 350 Mont. 489, 209 P.3d 225 (2009)	17
<i>In the Matter of A.S.A.</i> , 258 Mont. 194, 852 P.2d 127(1993)	9
<i>Jim's Excavating Serv., Inc. v. HKM Associates</i> , 265 Mont. 494, 878 P.2d 248 (1994)	2

<i>Liedle v. State Farm Mut. Auto. Ins. Co.</i> , 283 Mont. 129, 938 P.2d 1379 (1997)	2
<i>Matter of Custody of C.J.K.</i> , 258 Mont. 525, 855 P.3d 90 (1993)	13
<i>Matter of Goldman</i> , 179 Mont. 526, 588 P.2d 964 (1978)	12
<i>Mont. Power Co. v. Pubic Serv. Commn.</i> , 206 Mont. 359, 671 P.2d 604 (1983)	9, 10, 11
<i>Polasek v. Mura</i> , 2006 MT 103, 332 Mont. 157, 136 P.3d 519	17
<i>Schuff v. A.T. Klemens & Son</i> , 303 Mont. 274, 16 P.3d 1002, P28 (2000)	2, 19
<i>State ex rel. Mazurek v. District Court</i> , 302 Mont. 39; 22 P.3d 166 (2000)	2, 3, 4, 18
<i>State ex rel. Shelhamer v. District Court</i> , 159 Mont. 11, 494 P.2d 928 (1972)	13
<i>State v. Champagne</i> , 245 Mont. 147, 800 P.2d 154 (1990)	15
<i>State v. Giant</i> , 307 Mont. 74; 37 P.3d 49 (2001)	15
<i>State v. Moore</i> , 268 Mont. 20, 885 P.2d 457 (1994)	12
<i>Steab v. Luna</i> , 2010 MT 125, 356 Mont. 372, 233 P.3d 351, 2010 Mont. LEXIS 186	12, 13, 14, 15

Other State Cases:

<i>Patton v. U.S.</i> (D.C. App. 1997), 688 A.2d 408	4
<i>People v. Spencer</i> (N.Y. App. 1996), 219 A.D.2d 259, 641 N.Y.S.2d 910	4
<i>Remick v. Rollins</i> , 141 Me. 65, 38 A.2d 883	13
<i>State ex rel. LaSota v. Corcoran</i> (Ariz. 1978), 119 Ariz. 573, 583 P.2d 229	4
<i>State v. Hunt</i> (N.C. 1994), 457 S.E.2d 276	4
<i>Towe v. State</i> (Ark. 1990), 304 Ark. 239, 801 S.W.2d 42	4

Federal Constitutional Provisions, Cases, and other Federal Authorities:

U.S. Const. amend. V	9, 12
<i>Albert v. Chafee</i> , 571 F.2d 1063, 1977 U.S. App. LEXIS 12229	11
<i>In re Ruffalo</i> , 90 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968)	11
<i>Ohio Bell Tel. Co. v. Comm'n.</i> , 301 U.S. 292, 57 S. Ct. 724, 81 L. Ed. 1093 (1937)	11
<i>Santosky v. Kramer</i> , 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)	9
<i>Silverthorne Lumber Co. v. United States</i> , 251 U.S. 385	3

<i>United States v. Bohle</i> (2nd Cir. 1973), 475 F.2d 872	3
--	---

State Constitutional Provisions and Statutes:

Mont. Const. art. II, §17	3, 9, 12
---------------------------------	----------

STATEMENT OF THE ISSUES

1. Evidence obtained in violation of a citizen's due process rights is unreliable evidence upon which the district court cannot base its decision.
2. Maniaci preserved and appropriately appealed her constitutional claims for the right to due process and the right to travel.
3. In violation of her due process rights, Maniaci was not given notice of an intent to change her joint custody or her sharing of a "parental interest" with Kulstad to an award of sole custody to Kulstad.
4. Invective remarks raised by Kulstad should not divert the Court from the true issues on Appeal.

ARGUMENT

The appellate court's review of questions involving constitutional law is plenary. *State ex rel. Mazurek v. District Court*, 302 Mont. 39; 22 P.3d 166 (2000). A court's resolution of an issue involving a question of constitutional law is a conclusion of law which the appellate court reviews to determine whether the conclusion is correct. *Bryan v. Yellowstone County Elem. Sch. Dist. No. 2*, 312 Mont. 257, 60 P.3d 381 (2002); *Schuff v. A.T. Klemens & Son*, 303 Mont. 274, 16 P.3d 1002, P28 (2000) (citing *Liedle v. State Farm Mut. Auto. Ins. Co.* (1997), 283 Mont. 129, 132, 938 P.2d 1379, 1380-81; *Dew v. Dower* (1993), 258 Mont. 114, 125, 852 P.2d 549, 556; *Jim's Excavating Serv., Inc. v. HKM Associates* (1994), 265 Mont. 494, 515, 878 P.2d 248, 260).

Maniaci objected on constitutional and due process grounds and moved to strike the testimony of Dr. Silverman, Dr. Miller, and the Guardian ad Litem, Jo Antonioli, to the extent their testimony relied on the determination reported by Child and Family Services Division (CFSD) that Maniaci psychologically abused her children. (App. Doc. 25.) The district court denied Maniaci's motion. (App. Doc. 26.)

"Concerns about procedural due process, and the concomitant right to notice and a hearing, do not arise until there is an actual or threatened deprivation of the

person's life, liberty or property.” *Dowell v. Mont. Dep't of Pub. HHS*, 2006 MT 55 (citing Mont. Const. art. II, §17). Here, Maniaci presented evidence and testimony of the violation of her due process rights through Nicole Grossberg, Cherill Rolfe, Jennifer Walrod, and Jo Antonioli. (Appellant's Brief, pp. 24-26.) In addition, Maniaci presented evidence of the reliance on the decision by CFSD in violation of her due process rights by Jo Antonioli, Dr. Miller, and Dr. Silverman. (Appellant's Brief, pp. 23-24.)

CFSD's determination without following its own statutory and regulatory procedures that Maniaci psychologically abused her children was made in violation of Maniaci's rights to due process. The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392. (Emphasis added.)

This Court in *Mazurek, supra*, addressed unreliable evidence as evidence that infringed on the individual's basic constitutional rights which denied the individual a fair trial. In both federal and state court, it is well-established that the use of unconstitutionally obtained evidence and the use of unconstitutional law enforcement practices is considered illegally obtained evidence that cannot be relied upon at trial. *Mazurek*, 2000 MT 266, P22 (citing *United States v. Bohle*

(2nd Cir. 1973), 475 F.2d 872, 875-76; *Patton v. U.S.* (D.C. App. 1997), 688 A.2d 408, 411 *State v. Hunt* (N.C. 1994), 457 S.E.2d 276, 285; *Towe v. State* (Ark. 1990), 304 Ark. 239, 801 S.W.2d 42, 43; *State ex rel. LaSota v. Corcoran* (Ariz. 1978), 119 Ariz. 573, 583 P.2d 229, 237-38).

In the criminal forum, evidence, testimony, and investigations which are obtained in violation of constitutional rights are held to be inadmissible. *Mazurek, supra*, (citing *People v. Spencer* (N.Y. App. 1996), 219 A.D.2d 259, 641 N.Y.S.2d 910, in which the defendant's first conviction was reversed after an investigation revealed that law enforcement officers in the case had falsified evidence and suborned perjured testimony from a witness. *Spencer*, 641 N.Y.S.2d at 911.).

Here, the district court approved and incorporated into its Final Parenting Plan the GAL's proposed parenting plan (App. Doc. 21) and the PACT report, (App. Doc. 20). Therefore, the appellate court's review must include a review of the conclusions within those documents adopted by the district court in addition to the pertinent Conclusions of Law Nos. 2, 4, 5, 6, 7, 8, 9, and paragraphs 1, 2, 5, and 6 of the district court's Order, pp. 40 and 41. (App. Doc. 15.)

The PACT report specifically references its reliance on CFSD:

CONCLUSIONS: The following conclusions are based upon data relied upon in the Parenting Plan Evaluation and data which have been subsequently gathered in the course of PACT's involvement including: . . . reports

made to Child and Family Services Division (CFSD) and information and reports from CFSD

(App. Doc. 20, p. 1.)

The GAL's proposed parenting plan made "in consultation with PACT" also relied on the determinations made by CFSD. (App. Doc. 21, p.12.)

If Dr. Maniaci fails to follow the procedures set forth above, or if CFSD finds indication of continued coaching by Dr. Maniaci, or anyone acting on her behalf, the recommendation is that the Court order that Dr. Maniaci's parenting time be supervised at Planet Kids.

(App. Doc. 21, p. 9.) This statement is identical to language in the final PACT report. (App. Doc. 20, pp. 6-7.)

Having relied on the determinations made by CFSD, the PACT report and the GAL draw the following conclusions:

Dr. Maniaci has interacted in such a way with the children that Child and Family Services Division **(CFSD) has concluded that the children are at risk of psychological abuse by Dr. Maniaci (see #6 below). A reasonable hypothesis is that the children may feel that the most effective way of engaging Dr. Maniaci is to report negative things about Ms. Kulstad to her.** (Emphasis added.)

(App. Doc. 20, p. 2, ¶3.)

Dr. Maniaci or persons acting on her behalf have continued to levy allegations of abuse against Ms. Kulstad, all of which have been unsubstantiated by the Child and Family Services Division (CFSD). **CFSD**

has, however concluded in their 10/19/09 report that the children are at risk of psychological abuse due to continued coaching of the children and exposure of the children to attitudes and statements made against Ms. Kulstad by Dr. Maniaci. They reiterated this concern in their 1/11/10 letter to Ms. Antonioli stating: “Because of these latest unfounded reports called to the Department concerning Michelle’s care of the children, **the CFSD has more concern that these children are exposed to psychological abuse by Barbara Maniaci.**” (Emphasis added.)

They expressed further:

The CFSD would be very concerned if the children, [L.M.] and [N. M.] were to be sent to Tennessee at this time. It is the recommendation of CFSD that Barbara Maniaci visit her children in the Missoula environment Dr. Maniaci’s continued attempts to indoctrinate the children against Ms. Kulstad and to interfere in the children’s relationship with Ms. Kulstad are harmful to the children in the following ways: (Emphasis added.)

(App. Doc. 20, pp. 3-4, ¶6.)

Dr. Miller, who authored the PACT report, then lists five ways, that based on the conclusions reached by CFSD, Maniaci is harmful to her own children.

The Court in its Order states that Dr. Miller has “[n]o independent knowledge of psychological abuse.” (Emphasis added.) (App. Doc. 15, p. 21, ¶31.) The PACT team is relying wholly on CFSD’s conclusion that Maniaci is a child abuser. (Appellant’s Brief, p. 6.) The GAL testified that she never said Dr.

Maniaci is abusing the children and she has no independent information other than the reports of CFSD. (2010 Hr'g Tr. 26-27:20-6.)

The PACT report recommends a parenting schedule that after two years “Dr. Maniaci would have the burden of proof to demonstrate that circumstances have changed such that **she is no longer attempting to indoctrinate the children against Ms. Kulstad, . . .**” (Emphasis added.) (App. Doc. 20, p. 6, ¶2.)

The Court, likewise, relied on the conclusions of CFSD which were relied upon by the GAL, Dr. Miller, and Dr. Silverman, who are the PACT team members:

Dr. Maniaci appears to be unable to cease indoctrinating the children against Michelle, or to cease coaching them to make untrue statements about her. Dr. Miller and Dr. Silverman both testified that these behaviors are harmful to the children.

(App. Doc. 15, pp. 33-34, ¶20.)

From the PACT team’s reliance on CFSD’s conclusions, Dr. Maniaci, who has been the children’s custodial parent from the day she adopted them, was, without notice, stripped of her custody. The Court awarded sole custody to Kulstad. (App. Doc. 15 p. 40, ¶1.) Dr. Maniaci’s contact with her children was reduced to supervised visitation at Planet Kids in Missoula, Montana, and all other recommendations of the final PACT report and the GAL’s Final Parenting Plan

were adopted. (App. Doc. 15, p. 40, ¶¶5-6.) Those recommendations severely restricted Maniaci's parenting rights.

- PACT recommends that the children remain in the Missoula area;
- Dr. Maniaci's parenting time with the children must occur only in Montana, within 100 miles of Missoula;
- Dr. Maniaci may have only two scheduled calls a weeks with her young children;
- Dr. Maniaci cannot give messages to her children at school;
- Neither Dr. Maniaci nor anyone acting on her behalf shall make a complaint to any authority in Tennessee or any state other than Montana concerning alleged abuse or bad parenting by Ms. Kulstad;
- If such a report occurs, it will be presumed that Dr. Maniaci is acting contrary to the best interest of the minor children;
- Dr. Maniaci cannot move out of the state of Montana with the children without an Order of the Court. (Ms. Kulstad may travel with the children out of the state of Montana without Court approval.); and

- Dr. Maniaci's supervised visitation shall be in Missoula one week per month, provided she gives at least 2 weeks' notice. In case of a conflict her parenting shall be rescheduled.

(App. Docs. 20 and 21.) (Emphasis added.)

"The United States and Montana Constitutions ensure that '[n]o persona shall be deprived of life, liberty, or property without due process of law.' Mont. Const. art. II, §17; U.S. Const. amend. V. A natural parent's right to the care and custody of his or her child is a 'fundamental liberty interest' that must be protected by 'fundamentally fair procedures.' *In the Matter of A.S.A.*, 258 Mont. 194, 197, 852 P.2d 127, 129 (1993) (citing *Santosky v. Kramer*, 455 U.S. 745, 753-54, 102 S. Ct. 1388, 1394-95, 71 L. Ed. 2d 599(1982)); *In re J.N.*, 1999 MT 64, P12, 293 Mont. 524, 977 P.2d 317 (citations omitted)). Due process requires notice and the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mont. Power Co. v. Pubic Serv. Commn.*, 206 Mont. 359, 671 P.2d 604 (1983).

Clearly, Maniaci's fundamental liberty interest to the custody and care of her children was violated on little more than gossip, an unsupported opinion by a state agency that failed to follow its own process and procedure designed to protect citizen's basic due process rights. "Administrative agencies are not exempt from the constitutional restraints of due process requirements. Long ago

the United States Supreme Court recognized that due process protections cannot be compromised based on an assertion that expediency was necessary.” *Montana Power Co., supra*. In *Montana Power*, this Court found that the Public Service Commission had more than sufficient time to give notice and hearing to Montana Power and failing to do so disregarded the due process rights of Montana Power Company.

Here, CFSD also had sufficient time to give Maniaci notice and proceed in accordance with their investigative authority.

Regulatory commissions have been invested with broad powers within the sphere of duty assigned by them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' of a fair and open hearing be maintained in its integrity. The right to such a hearing is one of 'the rudiments of fair play' assured to every litigant by the Fourteenth Amendment as a minimal requirement. There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored.

Montana Power, supra, at 369-370 (citing *Ohio Bell Tel. Co. v. Comm'n.* (1937), 301 U.S. 292, 304-05, 57 S. Ct. 724, 730-31, 81 L. Ed. 1093, 1101-02 (citations omitted)).

Referencing Justice Frankfurter, in *Montana Power*, this Court clarified that “the process is not a yardstick but a delicate process involving the exercise of judgment, which requires a balancing of the hurt complained of and the good accomplished.” *Montana Power* at 371. The hurt to Maniaci was compounded by the reliance on CFSD’s opinion by the GAL, the PACT team, and, finally, its adoption by the district court resulting in the loss of custody of her children and the imposition of severe restrictions to her continued contact with them.

Due process requires notice of the alleged misconduct charged and an opportunity to respond. *In re Best*, 2010 MT 59 (citing *In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968)). CFSD opened no investigation on its charges of child (psychological) abuse against Maniaci. The failure to give notice of all the charges brought against [her] is a denial of [her] due process right to a decision in compliance with statutory and regulatory procedures. *Albert v. Chafee*, 571 F.2d 1063, 1977 U.S. App. LEXIS 12229. How much more so when CFSD does not even bring charges against Maniaci. Here, not just the charges, but the CFSD’s conclusion, itself, is relied upon by the

District Court in issuing its Final Parenting Plan. (Appellant's Brief, pp. 10, 11, 23-31.)

CFSD did not give Maniaci notice of its charges of child abuse against her, an opportunity to see or present evidence, to confront or cross-examine witnesses, or to appeal; all of which are constitutionally guaranteed. See also *Best, supra*. Due process requires a fair and impartial tribunal, *State v. Moore*, 268 Mont. 20, 51, 885 P.2d 457, 477 (1994), and a fair hearing, *Matter of Goldman*, 179 Mont. 526, 551, 588 P.2d 964, 978 (1978).

The Eighteenth Judicial District Court of Montana found due process rights ignored in *Centech Corp. v. Sprow*, 2005 MT 467 (2005), when CEnTech was forced to answer and defend against claims for which it was never accused. CEnTech's due process rights were found to have been ignored by the Human Rights Commission (citing *Frasceli, Inc. v. Department of Revenue Liquor Div.* (1988), 235 Mont. 152, 156, 766 P.2d 850, 852 ("Due process interests certainly are substantial rights.")). The district court was affirmed in *Centech Corp. v. Sprow*, 2006 MT 27, 331 Mont. 98, 128 P.3d 1036 (2006).

Failure to give proper notice was found to violate the mother's due process rights under Mont. Const. Art. II, §17 and U.S. Const. Amend. V in *Steab v. Luna*, 2010 MT 125, 356 Mont. 372, 233 P.3d 351, 2010 Mont. LEXIS 186,

which concerned a father's intent to seek custody. This Court found that "if a permanent change in custody appears to the court to be necessary then due process requires that an application be made for that purpose and proper notice of such application be given." *Steab* at 378 (citing *State ex rel. Shelhamer v. District Court*, 159 Mont. 11 at 15, 494 P.2d 928 at 930 (1972)).

The Montana Supreme Court in *Shelhamer, supra*, at 13-14, relied on language by the Supreme Court of Maine:

There was no prayer in the petition to change any provision of the original decree as to custody and visitation of the children, but the new decree makes an alteration in that respect. Established practice gives parties a right to assume that no change will be made on an issue which is not formally presented to the Court by the petition or pleadings.

Remick v. Rollins, 141 Me. 65, 38 A.2d 883, 884.

The requirement that all issues to be tried must be raised in the pleadings applies to child custody disputes, and a district court does not have jurisdiction to grant relief outside of the issues presented by the pleadings, without agreement of the parties. *Matter of Custody of C.J.K.*, 258 Mont. 525, 527, 855 P.3d 90, 91 (1993), in which the immediate primary physical custody of a child was not properly before the court for its ruling.

The reversible error in cases concerning the lack of notice and opportunity for a meaningful hearing is one of constitutional due process of law. *Steab, supra*. Here, neither Maniaci nor Kulstad sought sole custody. Neither Kulstad's proposed parenting plan, the GAL's proposed parenting plan, nor the notice of hearing alerted Maniaci that she stood to lose both her right to joint or shared custody and her right of continuing visitation with her young children on a permanent basis. (App. Docs. 21, and 27, 28, and 29 (attached).) The district court exceeded the relief sought by Kulstad. The CFSD did not open an investigation and follow the process of notifying Maniaci of their charge of child abuse against her. (Appellant's Brief, pp. 24-26.) The district court, likewise, without notice to Maniaci or application by Kulstad, awarded sole custody to Kulstad.

The CFSD letter solicited by the GAL *ex parte* and relied upon by the PACT team as well as the CFSD's verbal representations of its determination of psychological abuse against Dr. Maniaci was not only "designed to influence judicial action" it did, in fact, influence the district court's decision as outlined in Appellant's Brief, pp. 10, 11, 23-31. Likewise, the *ex parte* letter by Dr. Silverman sent to the district court post-trial violated Maniaci's due process rights. "To consider evidence outside the trial setting would defeat due process generally

....” *State v. Giant* (in the context of a motion for directed verdict), 307 Mont. 74; 37 P.3d 49 (2001).

This Court in *Steab, supra*, addressed ex parte communications as follows:

Further, we are troubled by the possible implications to Launa’s due process rights of Ms. Hale’s ex parte communications with the District Court. We have previously expressed concern regarding ex parte communications “designed to influence judicial action” as a potential violation of a litigant’s constitutional due process rights. *State v. Champagne*, 245 Mont. 147, 150-52, 800 P.2d 154, 156-57 (1990). Ms. Hale’s letter was written to the court “to refresh some of [their] conversations and add additional information regarding the Steab case.”

Steab, 2010 MT 125, P26.

This Court concluded that the letter and its reference to previous communications raise the potential of an appearance of impropriety. Here, Dr. Silverman supplements his testimony *ex parte*, post trial by letter to Judge McLean and the court-appointed GAL solicits *ex parte* letters of conclusions of abuse against Maniaci from CFSD. (2010 Hrg Tr. 26:10-14, App. Doc. 24.)

Having heard the unreliability of the evidence charging Maniaci with “coaching” and psychologically abusing her children, the Court incorporated the PACT report (which based its conclusions on CFSD’s determination) into its final order and approved the GAL’s proposed parenting plan, (which was also based on

CFSD's determination). The Final Parenting Plan terminated Maniaci's custody rights of her children and severely restricted her communication with them. The due process issue was addressed throughout the trial and timely and appropriately raised in this appeal when the district court issued its conclusions of law and order.

Maniaci's constitutional right to travel was a focal point of the trial. The GAL's proposed parenting plan, which adopts the PACT report, restricts Maniaci's right to travel (also based on the determination of CFSD, 2010 Hr'g Ex. M). The GAL's proposed parenting plan and the PACT report was approved and adopted by the District Court and incorporated into its final parenting plan. The district court did not direct the parties to file proposed findings of fact and conclusions of law either before or after trial. Rather, the court requested the parties' resubmit their proposed parenting plans. (2010 Hr'g Tr. 510-511.)

Maniaci's proposed parenting plan included exercising her parental rights outside of the state of Montana pursuant to the Montana Fourth Judicial District Parenting Guidelines. (App. Docs. 13 and 29, attached.) Kulstad's proposed plan restricted Maniaci's visitation to the state of Montana. (App. Doc. 27, attached.) The GAL's plan, which incorporated the PACT report, conditions visitation with Maniaci's return to the state of Montana. (App. Doc. 21.)

Throughout the hearing, Maniaci and Kulstad presented evidence and testimony concerning Maniaci's exercise of her parental rights outside the state of Montana. (Appellant's brief, pp. 22-23.) The District Court in its Final Order by approving and adopting the GAL's proposed parenting plan and the PACT report denies Maniaci her constitutional right to travel, *In re Marriage of Guffin*, 2009 MT 169, 350 Mont. 489, 209 P.3d 225 (2009), unless she gives up her federal and state constitutional right to care for and raise her children. *Polasek v. Mura*, 2006 MT 103, 332 Mont. 157, 136 P.3d 519.

Maniaci's constitutional right to travel, which is inherently incorporated into the Fourth Judicial District Parenting Guidelines (App. Doc. 13), was a contested issue to which both parties presented witness testimony and evidence. (Appellant's Brief, pp. 22-23.) Maniaci timely and appropriately raised her constitutional right to travel in her appeal when the district court issued its conclusions of law.

Kulstad accuses Maniaci of "abandon[ing]" her children. When, in fact, the parties stipulated that the children would remain in Missoula only until entry of the final parenting plan which Maniaci believed was imminent. (App. Doc. 11.) The statutory elements of abandonment, MCA § 41-3-102(1), do not exist here, nor was abandonment an issue before the court except as an inflammatory tool to

cast aspersions on Dr. Maniaci's decision to relocate to Tennessee. In addition, Kulstad casts aspersions on Maniaci's attorney in her *Response Brief of Appellee* by alleging Maniaci's attorney made misstatements of fact to the district court.

The district court's reference is a misstatement of the facts. Maniaci, in her briefs concerning the temporary protective order prohibiting the disclosure of the children's therapy notes, outlined the orders issued by the Court allowing Kulstad access to all of the children's records including the CFSD records (App. Docs. 1, 2, and 3), as well as allowing access to the therapy notes by two court-appointed doctors and the court-appointed GAL. (App. Doc. 19, *Defendant's Response to GAL's Motion for Protective Order*, p. 2, ll. 2-6, and p.12, ll. 12-17).

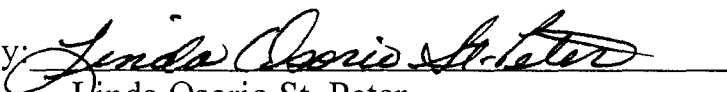
Kulstad hurls invectives against Maniaci claiming she "does violence to the truth", "demonize[s] Kulstad and then [demonizes] the District Court"; "shift[s] the focus from the best interests of the children to her own selfish desires"; "for Maniaci, this case has never been about the children's best interests". (Response Brief of Appellee, pp. 27.) These slurs are not raised as an issue for review by the Montana Supreme Court, but, rather, an attempt to divert the Court's attention from the true issues of this case. "A party's arguments must be supported with citation to legal authority and, where no authority is cited, an appellate court will not address the arguments." *Mazurek, supra*.

If Kulstad's counsel believes unethical conduct occurred by Maniaci's counsel, he was legally bound to report said violations pursuant to *Schuff, supra*, at P38. Having failed to report the alleged ethical allegations, Maniaci and her counsel can only conclude that the remarks are intended to influence this Court to set aside Maniaci's constitutional rights because she and her attorney are "bad actors" or politically incorrect and, thus, Maniaci is undeserving of the constitutional protections afforded all citizens.

CONCLUSION

Based on the multiple violations of Maniaci's rights to due process, the district court's Findings of Fact, Conclusions of Law and Order Re Parenting should be reversed and Maniaci's custody of her children restored to her.

Respectfully submitted this 17 day of August, 2010.

By: 
Linda Osorio St. Peter
ST. PETER LAW OFFICES, P.C.

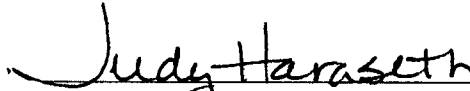
Austin R. Nimocks
ALLIANCE DEFENSE FUND

Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11, Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text, typeface of 14 points, is double spaced, and the word count does not exceed 5,000 words, excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 17 day of August, 2010.


Judy Haraseth, PLS

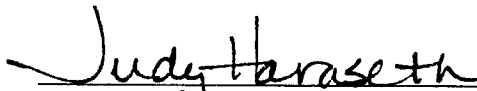
CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of August, 2010, I delivered a copy of the foregoing Appellant's Reply Brief, via U.S. First Class Mail, to:

Michael G. Alterowitz, Esq.
ALTEROWITZ LAW OFFICES, P.C.
327 West Pine Street
Missoula, MT 59802

Susan Ridgeway, Esq.
210 E. Pine Street, Suite 200
P.O. Box 8242
Missoula, MT 59807-8242

Elizabeth L. Griffing, Esq.
ACLU OF MONTANA FOUNDATION
P.O. Box 9138
Missoula, MT 59807


Judy Haraseth, PLS